



MINUTES

Executive Board

**Sixth Meeting
2011 Interim
August 22, 2011**

**Room 413
State Capitol
Pierre, South Dakota**

The sixth 2011 interim meeting of the Legislative Research Council Executive Board was called to order by Chair Representative Charles M. Turbiville at 10:00 a.m. (CT), August 22, 2011, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Joni M. Cutler (Vice Chair), Bob Gray, Jim Hundstad, Ryan Maher, Tom R. Nelson, and Larry Tidemann; and Representatives Gene Abdallah, Lance Carson, Kristin A. Conzet, Marc Feinstein, Larry Lucas (Ranking Minority Member), Val Rausch, Charles M. Turbiville (Chair), and Mark E. Venner. Senator Craig Tieszen was excused.

Staff members present included Jim Fry, LRC Director, and Teri Retrum, Administrative Assistant.

(Note): For the purpose of continuity, these minutes are not necessarily in chronological order. Also, all material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council (LRC). This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Minutes and Agendas."

(Note): On Monday, August 22, 2011, the Budget Subcommittee met at 8:15 a.m.; the Legislative Interns Subcommittee met at 8:15 a.m.; the Investment Council Subcommittee met at 9:00 a.m.; and the Personnel Subcommittee met at 9:30 a.m.

Approval of Minutes

REPRESENTATIVE RAUSCH MOVED, SECONDED BY REPRESENTATIVE CONZET, THAT THE MINUTES OF THE JUNE 27, 2011, MEETING BE APPROVED. The motion prevailed on a voice vote.

Approval of Agenda

REPRESENTATIVE RAUSCH MOVED, SECONDED BY REPRESENTATIVE VENNER, THAT THE AGENDA BE APPROVED. The motion prevailed on a voice vote.

Chair Charles Turbiville noted the passing of former Representative Gordon Pederson from Wall, South Dakota, and the impact he had on the South Dakota Legislature, the state, and his legislative district. Chair Turbiville said that former Representative Pederson served his constituents well and that he will be missed by many South Dakotans.

Report on Membership in Midwest Higher Education Compact

At the behest of Chair Turbiville, Senator Jeffrey Haverly reviewed the history of how and why the dues to the Midwest Higher Education Compact (MHEC) have been paid. Senator Haverly informed the Board that he also serves as a member to MHEC and listed the benefits to South Dakota derived from membership in the Compact.

Senator Haverly said that South Dakota joined MHEC in 2008. The reason the state joined the Compact was to find efficient and effective ways to educate South Dakota citizens. Senator Haverly commented that the Compact works because of the purchasing power of twelve states versus a single state and listed some of the savings realized by South Dakota's membership in MHEC.

Senator Haverly stated that he understands the Board's frustration regarding the last minute payment of \$95,000 in dues to MHEC. He stated that it was an oversight on his part because the dues money should have been placed as a line item in the Board of Regents budget. Senator Haverly asked the Executive Board not to blend that mishap with the issue of membership in MHEC because the Compact provides for savings on computer hardware and software and other programs. He said that many school districts have benefitted from MHEC programs.

Senator Haverly distributed a paper titled "MHEC in South Dakota" outlining the savings provided to South Dakota through membership in MHEC (**Document #1**) and a booklet titled "Advancing Education through Cooperation" published by MHEC (**Document #2**).

Stating that he does not know all there is to know about MHEC to argue the matter either way, **Representative Gene Abdallah** said that his objection is not with the program savings realized by membership in MHEC but with the manner in which the issue was handled and then reported to the Executive Board.

Senator Haverly said that he agreed with Representative Abdallah that the process was handled incorrectly and said that he takes full responsibility for the oversight.

Representative Larry Lucas said that he appreciated the information from Senator Haverly. Representative Lucas asked if private colleges and schools also can participate in the savings provided through membership in MHEC.

Senator Haverly said that private institutions are eligible and that the word needs to get out to those facilities.

Report of the South Dakota Investment Council

As Chair of the South Dakota Investment Council (SDIC), **Mr. Joseph Anglin** introduced the following Council members present at this meeting: Mr. Jon Hunter, Mr. Jarrod Johnson, Mr. Jim Means, Mr. Rich Sattgast, Mr. Wes Tschetter, and Mr. Rob Wylie; and the following SDIC staff present: Mr. Matt Clark, Mr. Brett Fligge, Mr. Chris Nelson, Ms. Tammy Otten, and Ms. Laurie Riss.

Addressing the report (**Document #3**), Mr. Anglin noted the following:

- Graph showing assets managed by the SDIC for Fiscal Years 1973 to 2011;
- Page outlining the Investment Performance—Managed SDRS total fund for FY 2011 at 25.84% return (Mr. Anglin told the Council that this is the best in thirty years.)
- Graph denoting SDIC Annualized Total Fund--Assets managed—Outperformed SDIC benchmark in the 5th percentile;
- Graph addressing management fees—Mr. Anglin said that SDIC saves about \$52 million per year as it continues to manage funds at low management fees;
- Budget summary; and
- Three versions of the Council's FY 2013 budget request. Version B was recommended to the SDIC and was approved by the Council—Version B provides for first year of three-year plan toward Long-term plan levels, and maximum potential incentives funded at 90%.

Mr. Anglin noted that the contractual services provided by Steve Myers have been paid in full, and the contract has been completed;

Mr. Matt Clark, SDIC Investment Officer, reviewed the summary of the following trust fund fair value and asset allocation—as of June 30, 2011:

- Health Care Trust;
- Education Enhancement Trust;
- Dakota Cement Trust; and
- School and Public Lands.

When discussing the compensation and return-linked incentive methodology, Mr. Anglin commented that the Council continues to believe in tying compensation to investing for the long term.

Several Board members complimented the SDIC on its investment performance.

SENATOR TIDEMANN MOVED, SECONDED BY REPRESENTATIVE RAUSCH, THAT THE EXECUTIVE BOARD ADOPT BUDGET VERSION B AS RECOMMENDED BY THE SOUTH DAKOTA INVESTMENT OFFICER AND APPROVED BY THE COUNCIL, WHICH PROVIDES FOR THE FIRST YEAR OF THE THREE-YEAR PLAN TOWARD LONG-TERM PLAN LEVELS, AND MAXIMUM POTENTIAL INCENTIVES FUNDED AT NINETY PERCENT TO GO FORTH TO THE APPROPRIATIONS COMMITTEE DURING THE 2012 LEGISLATIVE SESSION. The motion prevailed on a roll call vote with 14 voting AYE, 1 EXCUSED. Those voting AYE: Gray, Hundstad, Maher, Nelson, Tidemann, Abdallah, Caron, Conzet, Feinstein, Lucas, Rausch, Venner, Cutler, Turbiville. Those EXCUSED: Tieszen.

Report of the South Dakota Retirement System

Mr. Rob Wiley, Executive Director/Administrator for the South Dakota Retirement System (SDRS), distributed a copy of "South Dakota Retirement System and Cement Plant Retirement Plan Projected Funded Status as of June 30, 2011" (**Document #4**).

The report included the following charts:

- (1) SDRS Projected Funded Status;
- (2) SDRS Projected Required Investment Return;
- (3) SDRS Funded Status Projection;
- (4) Cement Plant Retirement Plan Projected Status;
- (5) Cement Plant Retirement Plan Projected Required Investment Return; and
- (6) Cement Plant Retirement Plan Funded Status Projection.

(Note: The first three charts concerning SDRS include 2010 corrective action.)

Mr. Wylie informed the Board that investment earnings increased the SDRS assets by nearly 26 percent as of June 30, 2011. Those earnings resulted in the SDRS being fully funded as of June 30. The SDRS assets are 100 percent of the value of all potential future benefits to be paid to retirees. Also, the cost-of-living adjustment (COLA) will go to 3.1 percent beginning next July.

Regarding the Cement Plant Retirement Plan, Mr. Wylie said that there are only a few hundred people in the plan. He said that investment performance will determine how the plan will hold up. Ultimately, the plan will work its way out of existence in the next 30 to 40 years, according to Mr. Wylie.

Report on Dakota Corps Scholarship Program

Mr. Tony Venhuizen, Governor's Office, distributed the 2011-12 Annual Report of the Dakota Corps Scholarship Program **(Document #5)**.

Discussing the report, Mr. Venhuizen said that the Dakota Corps Scholarship Program was created by former Governor Mike Rounds to encourage South Dakota's high school graduates to complete their postsecondary education in South Dakota and to remain in the state upon graduation. Whereupon, those graduates agree to work in a critical need occupation for five years. Mr. Venhuizen said that some of those occupations include health care, large animal veterinarian, teachers of high school math or science in a public, private, or parochial school; teachers of K-12 music, special education, and foreign language in a public, private, or parochial school. The scholarship recipients receive money to cover tuition and fees. Mr. Venhuizen said that there are thirty recipients of the scholarships this year.

Mr. Venhuizen told the Board that Governor Dennis Daugaard is seeking more donations to support the Dakota Corps Scholarships.

Senator Larry Tidemann said that the Legislature would like to have some input into the selection process due to the money involved.

Mr. Venhuizen said that he welcomes Senator Tidemann's suggestion.

Senator Jim Hundstad said that he was appointed to that selection committee and that he was informed of and attended a meeting last year right before Legislative Session.

Chair Turbiville asked for direction from the Board on how to appoint members of the Legislature.

SENATOR GRAY MOVED, SECONDED BY SENATOR TIDEMANN, THAT THE EXECUTIVE COMMITTEE OF THE EXECUTIVE BOARD MAKE A RECOMMENDATION OF A DEMOCRAT AND REPUBLICAN LEGISLATOR TO SERVE ON THE SELECTION COMMITTEE FOR DAKOTA CORPS SCHOLARSHIPS The motion prevailed on a voice vote.

Approval of Investment Officer's Incentive Payment

SENATOR CUTLER MOVED, SECONDED BY REPRESENTATIVE RAUSCH, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION FOR THE PURPOSE OF SETTING THE SOUTH DAKOTA INVESTMENT OFFICER'S INCENTIVE PAYMENT. The motion prevailed on a voice vote.

The Board went into executive session at 12:00 p.m. and came out of executive session at 12:15 p.m.

SENATOR TIDEMANN MOVED, SECONDED BY SENATOR HUNDSTAD, THAT THE EXECUTIVE BOARD CONCUR WITH THE RECOMMENDATION OF THE INVESTMENT COUNCIL THAT THE SOUTH DAKOTA INVESTMENT OFFICER RECEIVE AN INCENTIVE PAYMENT OF \$263,203.19, BASED ON THE INCENTIVE PROGRAM. The motion prevailed on a roll call vote with 14 voting AYE, 1 EXCUSED. Those voting AYE: Gray, Hundstad, Maher, Nelson, Tidemann, Abdallah, Caron, Conzet, Feinstein, Lucas, Rausch, Venner, Cutler, Turbiville. Those EXCUSED: Tieszen.

The Executive Board recessed at 12:20 p.m. and reconvened at 1:40 p.m.

Report from Secretary Denny Kaemingk, Department of Corrections

Mr. Denny Kaemingk, Secretary, Department of Corrections, distributed copies of the South Dakota Department of Corrections After Incident Report Regarding James VcVay's Parole and Parole Absconding August 12, 2011 **(Document #6)**.

Mr. Kaemingk reviewed the circumstances surrounding parolee James McVay leaving the Jameson Prison Annex without authorization and murdering 75-year old Maybelle Schein of Sioux Falls. Mr. McVay has been charged with Murder 1st degree and Burglary 1st degree.

Mr. Kaemingk told the Board that McVay had been released on parole and placed in the Community Transition Program as provided for in SDCL 24-15-38:

24-15A-38. Inmate release to parole supervision--Conditions. Each inmate shall be released from incarceration to parole supervision, without a hearing with the board, at the time of the inmate's initial parole date, if the inmate has substantively met the requirements of the individual program directive established by the department, agreed to the conditions of supervision and has an approved parole release plan.

Chair Turbiville asked Mr. Kaemingk if there was anything that he would request the Legislature to do to help him in his job as Secretary of the Department of Correction.

Regarding possible legislation, Mr. Kaemingk said that the DOC is considering legislation to address initial parole determinations for inmates on out-of-state caseloads when complete information is not available from the host state.

Mr. Kaemingk reviewed the "after incident actions" taken by the DOC. He said that these actions most likely would not have prevented Mr. McVay's departure and, in some cases, do not reflect factors occurring in Mr. McVay's case. However, Mr. Kaemingk said that there are areas where it was determined that the processes could be enhanced.

Mr. Kaemingk also noted use of the Nixle Agency Website where the public can register to receive secure alerts by emails and texts free from local police and other public safety agencies regarding law enforcement information. The message can go out for walk-aways, releases, etc.

Responding to **Senator Joni Cutler**, Mr. Kaemingk said that Document #6 is posted on the DOC website.

Subcommittee Reports

LRC Budget Request

Representative Lance Carson said that the Budget Subcommittee recommended the 36-legislative session days proposal for the FY 2013 LRC budget.

Mr. Jim Fry, Legislative Research Council Director (LRC), discussed two proposals for an FY 2013 LRC Budget. The major points of divergence are the length of session and the provision of money for dues. The 40-day proposal reflects the increased costs appropriate to four extra days and funds the payment of dues to National Council of State Governments (NCSL), Council of State Governments/Midwest Legislative Conference (CSG/MLC), Uniform Laws Commission (ULC), and Education Commission of the States (ECS). The 36-day proposal reflects the shorter length of session, although it will allow for one more day than the 2012 session and does not provide for payment of any dues. The 40-day proposal registers a 6.7% increase over the FY 2012 budget while the 36-day budget shows no increase over the previous year.

Representative Lucas said that he is partial to the 40-day session, but he will not vote against what the subcommittee adopted. He said that the more time the Legislature gives up as legislators, the more power is given to the Executive Branch. Representative Lucas expressed his concern that legislators rush through the hearing process during a shorter session, which can increase the likelihood that mistakes will be made regarding legislation that will have to be corrected.

Senator Tidemann said that he supports the 36-day session, payment of a portion of dues, and payment for computers. He said that it is the responsibility of leadership to guide the Legislature through the shorter sessions.

Responding to Chair Turbiville, Mr. Fry said that the intent of the subcommittee's 36-legislative session days proposal is to make partial dues payment to each of the national organizations and work to get further funding in the next fiscal year.

Senator Hundstad commented that when the economic situation improves, the Legislature needs to fund up to the appropriate level.

Senator Cutler assumed the Chair.

Legislative Interns Subcommittee

Representative Lucas said that the subcommittee agreed to maintain 19 legislative interns at a cost of \$75,240.

Responding to **Representative Val Rausch**, Mr. Fry said that interns will not be provided for the Special Session.

SENATOR GRAY MOVED, SECONDED BY SENATOR TIDEMANN, THAT THE EXECUTIVE BOARD APPROVE THE LEGISLATIVE INTERN SUBCOMMITTEE REPORT. The motion prevailed on a voice vote.

REPRESENTATIVE RAUSCH MOVED, SECONDED BY SENATOR TIDEMANN, THAT THE EXECUTIVE BOARD ADOPT THE LEGISLATIVE RESEARCH COUNCIL'S FY 2013 BUDGET REQUEST TO GO FORTH TO THE APPROPRIATIONS COMMITTEE DURING THE 2012 LEGISLATIVE SESSION. The motion prevailed on a voice vote.

Department of Legislative Audit FY 1013 Budget Request

Mr. Martin Guindon, Auditor General, Department of Legislative Audit, reported that the department went through the peer review and received a clean opinion and no recommendations for improvement. Mr. Guindon said that there is no change to the department's budget; however, to be consistent with the Executive Branch, he is requesting \$16,019 to promote eligible personnel.

REPRESENTATIVE ABDALLAH MOVED, SECONDED BY REPRESENTATIVE CONZET, THAT THE EXECUTIVE BOARD ADOPT THE DEPARTMENT OF LEGISLATIVE AUDIT'S FY 2013 BUDGET REQUEST TO GO FORTH TO THE APPROPRIATIONS COMMITTEE DURING THE 2012 LEGISLATIVE SESSION. The motion prevailed on a voice vote.

Chair Turbiville resumed the Chair.

Issue Memo Request

Mr. Fry informed the Board that Senator Michael Vehle has requested staff to prepare an Issue Memo regarding telecommunications industries. He told the Board that staff would be able to prepare such an issue memo by the Board's April meeting. Due to the resignation of the primary telecommunications staff, the April timeline is needed to give the backup telecommunications staff time to research the issues involved. Mr. Fry said that, if Senator Vehle needs something specific for session, staff will expedite that particular item.

The Board agreed with Mr. Fry's comments and directed that an issue memo be prepared for the Board's April meeting.

Senator Cutler requested that a formal response be given to Senator Vehle regarding his issue memo request.

Mr. Fry said that he will notify Senator Vehle by phone and letter regarding the disposition of his request.

At this time, **SENATOR MAHER MOVED, SECONDED BY SENATOR HUNDSTAD, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION TO DISCUSS PERSONNEL MATTERS. The motion prevailed on a voice vote.**

The Executive Board went into executive session at 2:50 p.m. and came out of executive session at 3:10 p.m.

Adjournment

SENATOR HUNDSTAD MOVED, SECONDED BY REPRESENTATIVE CONZET, THAT THE EXECUTIVE BOARD BE ADJOURNED. The motion prevailed on a voice vote.

The Executive Board adjourned at 3:15 p.m.

